

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EDGAR R. ROBERTSON,

Plaintiff,

v.

Case No. 18-cv-509-pp

COMMISSIONER OF THE
SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER DENYING MOTION FOR LEAVE TO PROCEED WITHOUT
PREPAYMENT OF THE FILING FEE (DKT. NO. 6) AND REQUIRING THE
PLAINTIFF TO PAY A PARTIAL FILING FEE**

On April 2, 2018, the plaintiff—representing himself—filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No.1. The plaintiff also filed an incomplete, unsigned motion for leave to proceed without prepayment of the filing fee. Dkt. No.2. The court issued an order requiring the plaintiff to file a completed, signed request to proceed without prepayment of the filing fee, dkt. no. 4, and the plaintiff filed that request on May 2, 2018, dkt. no. 6.

In order to allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff has the ability to pay the filing fee, and if not, it must determine whether the lawsuit is frivolous. 28 U.S.C.

§§1915(a) and 1915(e)(2)(B)(i).

Based on the facts presented in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the full filing fee, but it will require the plaintiff to pay a partial filing fee. In his affidavit, the plaintiff states that he has income of approximately \$5,867 per month, dkt. no. 6 at 2, and expenses of approximately \$5,417 per month, id. at 2-3.¹ This means that the plaintiff has disposable income of \$450 per month left over after paying his expenses. The court concludes from that information that the plaintiff has demonstrated that he cannot pay the full \$350 filing fee and \$50 administrative fee. Because the plaintiff's income exceeds his expenses by approximately \$450 per month, however, the court finds that he has the ability to pay half of the filing fee, and will order him to do so.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

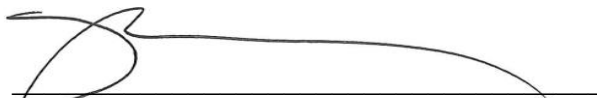
¹ The affidavit lists total monthly expenses of \$5,176, but when the court adds up the individual expenses, the total amount is actually \$5,417.

The plaintiff's complaint states that the facts used by the ALJ to deny the plaintiff's application for benefits were not based on a complete record as it relates to his disability. Dkt. No. 1 at 4. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **DENIES** the plaintiff's motion for leave to proceed without paying the filing fee. Dkt. No. 6. The court **ORDERS** that, by the end of the day on **July 13, 2018**, the plaintiff shall pay \$200 as a partial filing fee. The plaintiff may make that payment in cash or credit card at 517 East Wisconsin Avenue, Room 362, Milwaukee, or by personal check made payable to "Clerk, US District Court," and mailed to Clerk of Court, Eastern District of Wisconsin, 517 East Wisconsin Avenue, Room 362, Milwaukee, WI 53202 (the check should include the case number for this case—18-cv-509). If the plaintiff does not pay \$200 to the Clerk of Court for the Eastern District of Wisconsin by the end of the day on July 13, 2018, the court will dismiss his case for failure to pay the required filing fee.

Dated in Milwaukee, Wisconsin this 8th day of June, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge